



## Memorandum

**To:** Honorable Jerome E. Horton, Chairman  
Honorable Michelle Steel, Vice Chair  
Honorable Betty T. Yee, First District  
Senator George Runner, Second District  
Honorable John Chiang, State Controller

**Date:** May 7, 2012

**From:** Randy Ferris, Chief Counsel   
David Gau, Deputy Director   
Property and Special Taxes Department

**Subject:** **Board Meeting, May 30-31, 2012**  
**Chief Counsel Matters - Item J - Rulemaking**  
**Proposed Rule 100 Changes to Specified Special Tax and Fee Regulations**

We request your authorization to complete the Rule 100 changes to ten Special Tax and Fee regulations. These changes are proposed to be made to regulations pertaining to: the Diesel Fuel Tax Law; the Integrated Waste Management Fee Law; the Motor Vehicle Fuel Tax Law; and the Underground Storage Tank Maintenance Fee Law.

Each of the attached Statements of Explanation includes a detailed description of the proposed changes to each regulation and strikeout and underlined versions of each regulation illustrating the proposed changes. The changes replace repealed statutory references with more current statutory references, replace the two-word terms "fee payer" and "fee payers" with the one-word terms "feepayer" and "feepayers," respectively, and make grammatical changes. The changes are appropriate for processing under Rule 100 without the normal notice and public hearing process because they are changes without regulatory effect and do not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any California Code of Regulations provision.

If you have any questions regarding this request, please let me know or contact Ms. Carolee Johnstone, at (916) 323-3142.


Recommendation by:

  
Randy Ferris, Chief Counsel

Approved:

  
Kristine Cazadd, Executive Director

Approved:

  
David Gau, Deputy Director  
Property and Special Taxes Department

BOARD APPROVED  
At the \_\_\_\_\_ Board Meeting

\_\_\_\_\_  
Joann Richmond, Chief  
Board Proceedings Division

Attachments

Statements of Explanation for Changes to Diesel Fuel Tax Regulations 1435, *Tax Paid Twice on Diesel Fuel*, and 1436, *Returned Sales*.

Statement of Explanation for Changes to Integrated Waste Management Fee Regulation 3301, *Records*.

Statements of Explanation for Changes to Motor Vehicle Fuel Tax Regulations 1105, *Tax-Paid Fuel and Ex-Tax Fuel*, 1120, *Returned Sales*, 1132, *Shipments out of the State*, and 1161, *Tax Paid Twice on Motor Vehicle Fuel*.

Statements of Explanation for Changes to Underground Storage Tank Maintenance Fee Regulations 1205, *Fee Payer; Rebuttable Presumption*, 1212, *Liability for Fee*, and 1271, *Records*.

cc (with attachments):

Ms. Joann Richmond	MIC:80
Ms. Christine Bisauta	MIC:82
Mr. Steve Smith	MIC:82
Mr. Bradley Heller	MIC:82
Ms. Carolee Johnstone	MIC:82
Ms. Lynn Bartolo	MIC:57
Mr. Lou Feletto	MIC:31
Mr. Robert Zivkovich	MIC:57

# CHANGES WITHOUT REGULATORY EFFECT UNDER CALIFORNIA CODE OF REGULATIONS, TITLE 1, SECTION 100

## Statement of Explanation

### Title 18. Public Revenues

Regulation 1435, *Tax Paid Twice on Diesel Fuel*

Regulation 1436, *Returned Sales*

#### **A. Factual Basis**

Chapter 3 (commencing with section 1411) of division 2 of title 18 of the California Code of Regulations (chapter 3) contains regulations that implement, interpret, or make specific the provisions of the Diesel Fuel Tax Law (Law) (part 31 (commencing with section 60001) of division 2 of the Revenue and Taxation Code), which generally imposes an excise tax on diesel fuel sold in this state. Section 60601 of the Diesel Fuel Tax Law requires the State Board of Equalization (BOE) to enforce the excise tax and authorizes the BOE to prescribe, adopt, and enforce regulations relating to its administration and enforcement. The BOE hereby proposes to change the Diesel Fuel Tax regulations listed above under California Code of Regulations, title 1, section (Rule) 100 to correct outdated citations in their reference notes.

Section 60501 of the Law allows a supplier, as defined, to claim a refund of the tax paid on diesel fuel under specific circumstances. For example, and as relevant here, section 60501, subdivision (a)(4)(J), permits a supplier to claim a refund for tax paid on diesel fuel if the fuel was “[r]emoved from an approved terminal at the terminal rack, but only to the extent that the supplier can show that the tax on the same amount of diesel fuel has been paid more than one time by the same supplier.”

Section 60508 of the Law was amended, effective January 1, 2010 (Stats. 2009, ch. 545 (Assem. Bill No. (AB) 1547)), to permit a supplier to take a credit in lieu of a refund of tax paid on diesel fuel that is exported, removed, sold, or used by the supplier in a manner that would entitle the supplier to a refund under article 1 (commencing with section 60501) of chapter 8 of the Law, including, but not limited to, section 60501, subdivision (a)(4)(J). At the same time, section 60508.4 of the Law, which permitted a supplier to take a credit in lieu of a refund under the circumstances set forth in section 60501, subdivision (a)(4)(J), was repealed by AB 1547, effective January 1, 2010.

Regulation 1435, *Tax Paid Twice on Diesel Fuel*, and Regulation 1436, *Returned Sales*, of chapter 3 were both adopted on March 27, 2002, to, among other things, implement, interpret, and make specific the provisions of section 60508.4 of the Law, which permitted a supplier to take a credit in lieu of claiming a refund under section 60501, subdivision (a)(4)(J). Accordingly, the BOE included citations to section 60508.4 in Regulation 1435’s and Regulation 1436’s reference notes. Therefore, the BOE has concluded that, as a result of the amendments made to section 60508 and the repeal of section 60508.4 by AB 1547, it is necessary to replace the citations to section 60508.4 with citations to section 60508 in the reference notes for these two regulations and the BOE proposes to make the changes under Rule 100.

## **B. Proposed Changes**

### **1. Rule 100 Changes to Regulation 1435, *Tax Paid Twice on Diesel Fuel***

A Rule 100 change is proposed to replace “60508.4” with “60508” in the reference note for Regulation 1435 to replace a repealed statutory reference with a more current statutory reference.

### **2. Rule 100 Changes to Regulation 1436, *Returned Sales***

A Rule 100 change is proposed to replace “60508.4” with “60508” in the reference note for Regulation 1436 to replace a repealed statutory reference with a more current statutory reference.

The foregoing changes are appropriate for processing under Rule 100 because they are changes without regulatory effect and do not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any California Code of Regulations provision. Furthermore, these changes are necessary to replace a repealed statutory reference with a more current statutory reference and account for amendments to the Law made by AB 1547.

## PROPOSED CHANGES

1. Change Regulation 1435 (Tax Paid Twice on Diesel Fuel) to read as follows:

### **Regulation 1435. Tax Paid Twice on Diesel Fuel.**

(a) A supplier who removes diesel fuel from a terminal rack on which a prior tax was paid to the state may either file a claim for refund with the Board or in lieu of a refund take a credit on its tax return.

(b) Conditions to Allow a Credit on a Tax Return.

The credit will be allowed only if:

(1) A tax imposed on the diesel fuel by Revenue and Taxation Code Sections 60051 and 60052 was paid to the state by reporting the gallons on a tax return and was not credited or refunded (the “first tax” or “first taxpayer”);

(2) After imposition of the first tax, another tax was imposed on the diesel fuel by Revenue and Taxation Code Sections 60051 and 60052 and was paid to the state by reporting the gallons on a tax return (the “second tax” or “second taxpayer”);

(3) The person that paid the second tax to the state claims a credit on a tax return filed within three months after the close of the calendar month in which the second tax was reported to the state;

(4) The person that paid the first tax to the State has met the reporting requirements of paragraph (c) of this section; and

(5) A copy of the first taxpayer's report and any copies of statements of subsequent seller must be retained for inspection by the Board with the tax return on which the credit is claimed.

(c) Reporting Requirements.

(1) Reporting by persons paying the first tax.

Except as provided in paragraph (c)(2) of this section, the person that paid the first tax under Revenue and Taxation Code Section 60051 and 60052 (the first taxpayer) must file a report that is in substantially the same form as the model report provided in Exhibit A and contains all information necessary to complete such model report (the first taxpayer's report). A first taxpayer's report must be retained for inspection by the Board with the tax return on which the first tax was paid or reported.

(2) Optional reporting for certain taxable events.

Paragraph (c)(1) does not apply with respect to a tax imposed under Revenue and Taxation Code Section 60051 (removal at a terminal rack), Revenue and Taxation Code Section 60052(b)(2) (nonbulk entries into the state), or Revenue and Taxation Code Section 60052(d) (removals or sales by blenders). However, if the person liable for the tax expects that another tax will be

imposed under Revenue and Taxation Code Sections 60051 and 60052 with respect to the fuel, that person should file a first taxpayer's report.

(3) Information provided to subsequent owners, etc.

(A) By Person Required to File First Taxpayer's Report.

A first taxpayer required to file a first taxpayer's report under paragraph (c)(1) of this section must give a copy of the report to:

1. The person to whom the first taxpayer sells the diesel fuel within the bulk transfer/terminal system; or
2. The owner of the diesel fuel immediately before the imposition of the first tax, if the first taxpayer is not the owner at that time.

(B) By Person Filing Optional First Taxpayer's Report.

A first taxpayer filing a first taxpayer's report under paragraph (c)(2) of this section should give a copy of the report to:

1. The person to whom the first taxpayer sells the diesel fuel; or
2. The owner of the diesel fuel immediately before the imposition of the first tax, if the first taxpayer is not the owner at that time.

(C) By Person Receiving First Taxpayer's Report.

1. Bulk Transfer/Terminal System Transaction

A person that receives a copy of the first taxpayer's report and subsequently sells the diesel fuel within the bulk transfer/terminal system must give the copy and a statement that satisfies the requirements of paragraph (c)(3)(D) of this section to the buyer.

2. Rack and Below Rack Transaction

A person that receives a copy of the first taxpayer's report and subsequently sells the diesel fuel outside the bulk transfer/terminal system should give the copy and a statement that satisfies the requirements of paragraph (c)(3)(D) of this section to the buyer, if that person expects that another tax will be imposed under Revenue and Taxation Code Sections 60051 and 60052 with respect to the diesel fuel.

(D) Form of Statement.

A statement satisfies the requirements of this paragraph (c)(3)(D) if it is provided at the bottom or on the back of the copy of the first taxpayer's report (or in an attached document). This statement must contain all information necessary to complete the model statement provided in Exhibit B but need not be in the same format.

(E) Sale to Multiple Buyers.

If the first taxpayer's report relates to diesel fuel divided among more than one buyer, multiple copies of the first taxpayer's report must be made at the stage that the diesel fuel is divided and each buyer must be given a copy of the report.

(d) Claim for Refund.

If the supplier fails to take a credit on a tax return filed within three months after the close of the calendar month in which the second tax was imposed, the supplier may only file a claim for refund with the Board to recover the tax.

Each claim for a refund must contain the following information with respect to the fuel covered by the claim:

- (1) The information required in Revenue and Taxation Code Section 60501.
- (2) Volume and type of diesel fuel.
- (3) Date on which the claimant incurred the tax liability to which this claim relates (the second tax).
- (4) Amount of second tax that claimant paid or reported to the state and the tax return on which it was paid or reported.
- (5) A statement that claimant has not separately stated on the sales invoice reimbursement for both the first tax and the second tax or has not included in the sales price of the diesel fuel reimbursement for both the first tax and the second tax. The second taxpayer can only receive reimbursement for one tax from the customer.
- (6) A copy of the first taxpayer's report that relates to the diesel fuel covered by the claim.
- (7) If the diesel fuel covered by the claim was bought other than from the first taxpayer, a copy of the statement of subsequent seller that the claimant received with respect to that diesel fuel.

EXHIBIT A . . . [No Change]

EXHIBIT B . . . [No Change]

Note: Authority cited: Section 60601, Revenue and Taxation Code. Reference: Sections 60051, 60052, 60501, 60507, ~~60508~~60508.4 and 60521.5, Revenue and Taxation Code.

2. Change Regulation 1436 (Returned Sales) to read as follows:

**Regulation 1436. Returned Sales.**

(a) When diesel fuel included in a supplier's taxable removals, entries or sales is returned to the supplier by the customer to whom it was sold and is delivered into a refinery or an approved terminal's storage tank, the supplier may either file a claim for refund with the Board or in lieu of

the refund take a credit on its tax return. The credit memorandum covering the return of the diesel fuel shall identify the gallonage returned as either volumetric gallons or temperature corrected gallons based upon how the tax was originally invoiced to the customer and shall separately state the diesel fuel tax.

(b) It shall be presumed that the supplier purchased the diesel fuel that was returned as tax-paid diesel fuel if the credit memorandum includes diesel fuel tax. For the purpose of a refund or credit, it also shall be presumed that the subsequent removal of the diesel fuel from a terminal rack by the supplier that received the returned diesel fuel is made in the month that the diesel fuel was returned.

(c) Conditions to Allow a Credit on a Tax Return.

The credit will be allowed only if:

- (1) The returned diesel fuel was delivered into a refinery or an approved terminal storage tank.
- (2) The credit is taken on a tax return filed within three months after the close of the calendar month in which the diesel fuel is returned.
- (3) The supplier prepares a first taxpayer's report (as identified in Regulation 1435) when the diesel fuel is returned.
- (4) A copy of the first taxpayer's report and the credit memorandum must be retained for inspection by the Board with the tax return on which the credit is claimed.

(d) If the supplier fails to take a credit on a tax return filed within three months after the close of the calendar month in which the diesel fuel was returned, the supplier may only file a claim for refund with the Board to recover the tax. Each claim for a refund must contain the following information with respect to the diesel fuel covered by the claim:

- (1) The information required in Revenue and Taxation Code Section 60501.
- (2) Volume and type of diesel fuel.
- (3) Date on which the claimant received the returned diesel fuel.
- (4) A copy of the first taxpayer's report that relates to the diesel fuel covered by the claim.
- (5) A copy of the credit memorandum that returned the diesel fuel.

Note: Authority cited: Section 60601, Revenue and Taxation Code. Reference: Sections 60025, 60501 and ~~60508~~60508.4, Revenue and Taxation Code.

# CHANGES WITHOUT REGULATORY EFFECT UNDER CALIFORNIA CODE OF REGULATIONS, TITLE 1, SECTION 100

## Statement of Explanation

### Title 18. Public Revenues Regulation 3301, *Records*

#### **A. Factual Basis**

Chapter 8.3 (commencing with section 3301) of division 2 of title 18 of the California Code of Regulations (chapter 8.3) contains regulations that implement, interpret, or make specific the provisions of the Integrated Waste Management Fee Law (Law) (part 23 (commencing with section 45001) of division 2 of the Revenue and Taxation Code), pursuant to which the State Board of Equalization (BOE) administers the solid waste disposal fee imposed under section 48000 of the Public Resources Code. The BOE hereby proposes to change Regulation 3301, *Records*, of chapter 8.3 under California Code of Regulations, title 1, section (Rule) 100 to update the manner in which the BOE refers to persons that are liable for payment of the solid waste disposal fee in the regulation.

The Law was enacted in 1987 (Assem. Bill No. 2448, (Stats. 1987, ch. 1319)). Section 45009 of the Law defines the two-word term “fee payer” to mean “any person who is liable for the fee imposed pursuant to Section 48000 of the Public Resources Code and the two-word term “fee payer” is used throughout the Law. As a result, when the BOE adopted Regulation 3301 on February 5, 2003, the same two-word form of the term, “fee payer,” was used. However, since the adoption of Regulation 3301, the BOE has stopped using the two-word term “fee payer” to refer to a person that is liable for the payment of a BOE-administered fee in its forms and publications, and the BOE has adopted a uniform policy requiring its staff to use the single word “feepayer” in place of the two-word term “fee payer.” (See the direction regarding the word “feepayer” in the BOE Style A-Z section of BOE Publication 384, “A Style Guide for BOE Forms and Publications” (May 2011), Introduction and page 3 from the BOE’s internal website, attached.) Therefore, the BOE now proposes to change Regulation 3301 in order to replace the two-word terms “fee payer” and “fee payers” with the single-word terms “feepayer” and “feepayers,” respectively, under Rule 100, in order to make the use of the terms in the BOE’s regulation consistent with the use of the terms in all of the BOE’s forms and publications.

#### **B. Proposed Changes**

##### Rule 100 Changes to Regulation 3301, *Records*

Rule 100 changes are proposed to replace the term “fee payer” with “feepayer” in the first and second sentences of subdivision (a) and the second sentence of subdivision (b) of Regulation 3301, and to replace the term “fee payers” with “feepayers” in the first sentence of subdivision (b) of Regulation 3301, to update the form of the terms.

The foregoing changes are appropriate for processing under Rule 100 because they are changes without regulatory effect and do not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any California Code of Regulations provision. Furthermore, these changes are necessary to make the use of the relevant terms in the BOE's regulation consistent with the use of the same terms in all of the BOE's forms and publications.

## PROPOSED CHANGES

Change Regulation 3301 (Records) to read as follows:

### **Regulation 3301. Records.**

(a) General. A ~~feepayer~~fee payer shall maintain and make available for examination on request by the board or its authorized representatives, records in the manner set forth at California Code of Regulations, Title 18, Section 4901. Notwithstanding the record keeping requirements of the Department of Resources Recycling and Recovery set forth at California Code of Regulations, Title 14, Section 17414, for fee collection purpose the ~~feepayer~~fee payer shall retain and preserve records for a period of not less than four years except as provided in Section 4901.

(b) Specific Applications. In addition to the record keeping requirements set forth in subdivision (a), ~~feepayers~~fee payers shall comply with the following requirements. A ~~feepayer~~fee payer shall keep complete records, including but not limited to:

- (1) Weight tickets or other source documents recording amounts of waste entering the landfill.
- (2) Documentation supporting the validity of volumetric conversion factors used as an alternative to actual weight to report waste tonnage.
- (3) Reports to other local and state agencies of waste tonnage disposed.

Note: Authority cited: Section 45851, Revenue and Taxation Code. Reference: Section 45852, Revenue and Taxation Code.

## Introduction

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This house style guide has been developed by the Board of Equalization's (BOE) Editorial Services Section. As style changes over time, publication units, publishers, and newspapers generally decide to use one dictionary and one published style manual (in our case we use *Merriam Webster's Collegiate Dictionary* and *The Gregg Reference Manual*). In addition to the standard references, we have also developed this house style guide.

A team of editors, forms analysts, and Customer Service and Publishing Division managers developed this style guide to promote consistency in BOE forms and publications. This team discussed every item in this guide and agreed on how we should treat each individual entry.

If an example is not listed, please refer to *The Gregg Reference Manual, Eleventh Edition* for usage or *Merriam Webster's Collegiate Dictionary, Eleventh Edition*.

**E**

e.g., etc.	avoid; use for example, among others
enclosed (vs. attached)	to insert in the same envelope (see "attached")
ex tax	don't use; write out "without tax"

**F**

fax	lowercase
faxback	one word
federal	don't capitalize
feepayer	one word
fewer vs. less	use with things that are counted (fewer buckets, less water)
fine-tune	always hyphenated
firsthand	one word
fiscal year	lower case
follow-up (n., adj.)	<i>Example:</i> She was in charge of follow-up.(n) She did the follow-up work.(adj.)
follow up (v.)	<i>Example:</i> Please follow up with her as the deadline approaches.
form	avoid using before form identifier (BOE-770)
full-time	always hyphenated
fundraising	one word, no hyphen
FY (fiscal year)	capitalize when referring to fiscal year

**G**

Governor (the)	capitalize when referring specifically to the Governor of California
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**H**

handicap accessible	avoid; use wheelchair accessible
hard copy (n.)	<i>Example:</i> Please give it to Legal in hard copy.
hard-copy (adj.)	<i>Example:</i> Legal wants it in hard-copy format.
he/she; he or she; him/her; him or her	avoid both; use their or our
headquarters	a singular or plural noun
Headquarters	capitalized when referring to 450 N Street location
homepage	one word
Honorable	capitalized when used before name (the Honorable

Attachment

# CHANGES WITHOUT REGULATORY EFFECT UNDER CALIFORNIA CODE OF REGULATIONS, TITLE 1, SECTION 100

## Statement of Explanation

### Title 18. Public Revenues

Regulation 1105, *Tax-Paid Fuel and Ex-Tax Fuel*  
Regulation 1120, *Returned Sales*  
Regulation 1132, *Shipments out of the State*  
Regulation 1161, *Tax Paid Twice on Motor Vehicle Fuel*

#### **A. Factual Basis**

Chapter 1 (commencing with section 1101) of division 2 of title 18 of the California Code of Regulations (chapter 1) contains regulations that implement, interpret, or make specific the provisions of the Motor Vehicle Fuel Tax Law (Law) (part 2 (commencing with section 7301) of division 2 of the Revenue and Taxation Code), which imposes excise taxes on “motor vehicle fuel,” including gasoline and aviation gasoline, and “aircraft jet fuel.” The State Board of Equalization (BOE) hereby proposes to change the provisions of chapter 1 listed above under California Code of Regulations, title 1, section (Rule) 100 to correct outdated citations in the regulations’ reference notes and to make a minor grammatical change to the text of one regulation, as described in detail below.

Section 8101 of the Law allows a supplier, as defined, to claim a refund of the tax paid on motor vehicle fuel under specific circumstances, including, but not limited to, where the supplier buys and uses the fuel for purposes other than operating motor vehicles upon the public highways of the state, exports the fuel for use outside the state, or delivers the fuel to a terminal and removes the fuel from the terminal, as provided. In addition, prior to January 1, 2007, suppliers were permitted to choose to take a credit, in lieu of a refund, under most of these same circumstances, and there were individual statutes that separately pertained to each situation in which a credit could be claimed in lieu of a refund under section 8101, including sections 8106.5 and 8106.8 of the Law.

Effective January 1, 2007, sections 2, 4, and 5 of Assembly Bill No. 3076 (Stats. 2006, ch. 364) repealed section 8106.5 permitting a supplier to claim a credit in lieu of a refund with respect to exported tax-paid fuel, and section 8106.8 permitting a supplier to claim a credit in lieu of a refund with respect to tax-paid fuel delivered to or removed from a terminal at the rack, and amended section 8106 to consolidate into one statute all of the statutory provisions under which a supplier may claim a credit in lieu of a refund and provide that a supplier may claim a credit in lieu of a refund under all of the circumstances under which a supplier would be entitled to claim a refund under section 8101. As a result, section 8106 now permits the credits in lieu of refunds previously permitted by sections 8106.5 and 8106.8, and section 8106 should replace sections 8106.6 and 8106.8 in the reference notes for the regulations listed above. Therefore, the BOE now proposes to change the Motor Vehicle Fuel Tax regulations listed above, and described in detail below, to replace the citations to sections 8106.5 and 8106.8 with citations to section 8106 in the regulations’ reference notes and to change the word “Returns” to the word “Return” in Regulation 1120 in order to make one nonsubstantive, grammatical correction, under Rule 100.

## **B. Proposed Changes**

### **1. Rule 100 Change to Regulation 1105, *Tax-Paid Fuel and Ex-Tax Fuel***

A Rule 100 change is proposed to replace “8106.8” with “8106” in the reference note for Regulation 1105 to update the reference note by removing the reference to the repealed statute and replacing it with a reference to the statute that is currently applicable.

### **2. Rule 100 Changes to Regulation 1120, *Returned Sales***

A Rule 100 change is proposed to replace “8106.8” with “8106” in the reference note for Regulation 1120 to update the reference note by removing the reference to the repealed statute and replacing it with a reference to the statute that is currently applicable.

A Rule 100 change is also proposed to replace “Returns” with “Return” in the heading to subdivision (c) of Regulation 1120, to correct a grammatical error by making the term singular.

### **3. Rule 100 Change to Regulation 1132, *Shipments out of the State***

A Rule 100 change is proposed to replace “8106.5” with “8106” in the reference note for Regulation 1132 to update the reference note by removing the reference to the repealed statute and replacing it with a reference to the statute that is currently applicable.

### **4. Rule 100 Change to Regulation 1161, *Tax Paid Twice on Motor Vehicle Fuel***

A Rule 100 change is proposed to replace “8106.8” with “8106” in the reference note for Regulation 1161 to update the reference note by removing the reference to the repealed statute and replacing it with a reference to the statute that is currently applicable.

The foregoing changes are appropriate for processing under Rule 100 because they are changes without regulatory effect and do not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any California Code of Regulations provision. Furthermore, these changes are necessary to update the statutory references and to correct a grammatical error.

## PROPOSED CHANGES

1. Change Regulation 1105 (Tax-Paid Fuel and Ex-Tax Fuel) to read as follows:

### **Regulation 1105. Tax-Paid Fuel and Ex-Tax Fuel.**

(a) "Tax-paid fuel" is the gallonage of motor vehicle fuel acquired with the California motor vehicle fuel tax paid. An acquisition of motor vehicle fuel will be considered tax-paid only if it can be supported by one of the following:

(1) A sales invoice or a contract which clearly states that the motor vehicle fuel tax is included in the invoice or contract and proof that the amount representing motor vehicle fuel tax has been paid, or

(2) A motor vehicle fuel purchase receipt showing that the amount paid for the fuel included the motor vehicle fuel tax, or

(3) Other documentation showing that the motor vehicle fuel tax has been paid to the state.

(b) "Ex-tax fuel" is the gallonage of motor vehicle fuel acquired without the California motor vehicle fuel tax paid.

Note: Authority cited: Section 8251, Revenue and Taxation Code. Reference: Sections 7345, 7401, 7653, 8101 and ~~8106~~8106.8, Revenue and Taxation Code.

2. Change Regulation 1120 (Returned Sales) to read as follows:

### **Regulation 1120. Returned Sales.**

(a) When motor vehicle fuel included in a supplier's taxable removals, entries or sales is returned to the supplier by the customer to whom it was sold and is delivered into a refinery or an approved terminal's storage tank, the supplier may either file a claim for refund with the State Controller or in lieu of the refund take a credit on its tax return. The credit memorandum covering the return of the motor vehicle fuel shall identify the gallonage returned as either volumetric gallons or temperature corrected gallons based upon how the tax was originally invoiced to the customer and shall separately state the motor vehicle fuel tax.

(b) It shall be presumed that the supplier purchased the motor vehicle fuel that was returned as tax-paid motor vehicle fuel if the credit memorandum includes motor vehicle fuel tax. For purposes of a refund or credit, it also shall be presumed that the subsequent removal of the motor vehicle fuel from a terminal rack by the supplier that received the returned motor vehicle fuel is made in the month that the motor vehicle fuel was returned.

(c) Conditions to Allow a Credit on a Tax ~~Return~~Returns.

The credit will be allowed only if:

(1) The returned motor vehicle fuel was delivered into a refinery or an approved terminal storage tank.

(2) The credit is taken on a tax return filed within three months after the close of the calendar month in which the motor vehicle fuel is returned.

(3) The supplier prepares a first taxpayer's report (as identified in Regulation 1161) when the motor vehicle fuel is returned.

(4) A copy of the first taxpayer's report and the credit memorandum must be retained for inspection by the Board with the tax return on which the credit is claimed.

(d) If the supplier fails to take credit on a tax return filed within three months after the close of the calendar month in which the motor vehicle fuel was returned, the supplier may only file a claim for refund with the State Controller to recover the tax. The claim for refund must be filed with the State Controller within three years from the date of return of the fuel.

Each claim for a refund must contain the following information with respect to the motor vehicle fuel covered by the claim:

(1) The information required in Revenue and Taxation Code Section 8102.

(2) Volume and type of motor vehicle fuel.

(3) Date on which the claimant received the returned motor vehicle fuel.

(4) A copy of the first taxpayer's report that relates to the motor vehicle fuel covered by the claim.

(5) A copy of the credit memorandum that returned the motor vehicle fuel.

Note: Authority cited: Section 8251, Revenue and Taxation Code. Reference: Sections 7315, 8101, 8102, 8105 and 8106~~8106.8~~, Revenue and Taxation Code.

3. Change Regulation 1132 (Shipments out of the State) to read as follows:

**Regulation 1132. Shipments out of the State.**

(a) Definitions.

(1) Export. An export of motor vehicle fuel is the delivery or shipment of fuel by the supplier from a point in this state to a point outside of this state. The fuel is not exported if it is diverted in transit or for any reason is not actually delivered out of this state, regardless of documentary evidence held by the supplier respecting delivery of the fuel to a carrier for out-of-state shipment or to a vessel clearing for an out-of-state port.

(2) Carrier. A carrier means a person or firm who is regularly engaged in the business of transporting for compensation property owned by other persons and includes both common and contract carriers. The carrier may be hired by either the purchaser or the supplier.

(b) Requirements. A supplier may not claim an export exemption from motor vehicle fuel tax under Revenue and Taxation Code Section 7401(a)(3) unless the motor vehicle fuel is in fact exported and the export is accomplished in the manner specified in either (1) or (2) below:

(1) The supplier claiming the exemption from tax shows that it delivered the motor vehicle fuel to any vessel clearing from a port of this state for a port outside of this state and the fuel was actually exported from this state in the vessel; or

(2) The supplier claiming the exemption from tax shows that it exported the motor vehicle fuel from this state pursuant to a written contract requiring delivery by the supplier of the fuel to:

(A) the out-of-state point by facilities operated by the supplier,

(B) a carrier for shipment to a consignee at the out-of-state point, or

(C) a customs broker or forwarding agent for shipment to a location outside of this state.

(c) Exports of Ex-tax Fuel. The tax does not apply to the export of ex-tax motor vehicle fuel actually exported.

A supplier must claim the exemption for the export of ex-tax fuel on the return filed for the period in which the export was made. If a supplier fails to claim the exemption on the return and tax is erroneously paid on ex-tax export of fuel, a timely claim for refund must be filed with the Board pursuant to Section 8128 of the Motor Vehicle Fuel Tax Law in order to obtain a refund of the amount of taxes so overpaid.

(d) Exports of Tax-paid Fuel. In lieu of claiming a refund of tax for exports of tax-paid fuel with the State Controller as provided by section 8101(b) of the Revenue and Taxation Code, a supplier may take a credit on its return for tax-paid fuel when the fuel is exported to a point outside the state. The credit must be claimed on a return filed within three months after the close of the calendar month in which the tax-paid fuel is exported. If the credit exceeds the taxable gallons of motor vehicle fuel for the period in which the credit may be taken, refund of the tax on the excess gallonage can only be obtained by filing a claim for refund with the State Controller.

Failure to take credit on a return filed within three months after the close of the calendar month in which the tax-paid fuel is exported does not give rise to a right to file a claim for refund with the Board pursuant to section 8126 of the Revenue and Taxation Code. Instead, claims for refund for tax-paid fuel exported must be filed with the State Controller within three years from the date of purchase of the fuel.

(e) Documentation required for support. All shipments of motor vehicle fuel to points outside of the state for which tax exemption is claimed on a tax return shall be reported on a schedule accompanying the return for the period for which the exemption or credit is claimed.

The supplier must retain documentation to support the delivery of the fuel by the supplier at an out-of-state location for all exemptions or credits. Documentation may include, but is not limited to, contracts, bills of lading, delivery tickets, or meter readings. The supplier has the burden of providing the proper substantiation and documentation to support the exemption or credit.

Note: Authority cited: Section 8251, Revenue and Taxation Code. Reference: Sections 7338, 7401, 7651, 8101, 8102, 8105, 8106~~8106.5~~, 8126, 8128, 8129, 8301 and 8303, Revenue and Taxation Code.

4. Change Regulation 1161 (Tax Paid Twice on Motor Vehicle Fuel) to read as follows:

**Regulation 1161. Tax Paid Twice on Motor Vehicle Fuel.**

(a) A supplier who removes motor vehicle fuel from a terminal rack on which a prior tax was paid to the state may either file a claim for refund with the State Controller or in lieu of a refund take a credit on its tax return.

(b) Conditions to Allow a Credit on a Tax Return.

The credit will be allowed only if:

(1) A tax imposed on the motor vehicle fuel by Revenue and Taxation Code Sections 7362 and 7363 was paid to the state by reporting the gallons on a tax return and was not credited or refunded (the “first tax” or “first taxpayer”);

(2) After imposition of the first tax, another tax was imposed on the motor vehicle fuel by Revenue and Taxation Code Sections 7362 and 7363 and was paid to the state by reporting the gallons on a tax return (the “second tax” or “second taxpayer”);

(3) The person that paid the second tax to the state claims a credit on a tax return filed within three months after the close of the calendar month in which the second tax was reported to the state;

(4) The person that paid the first tax to the State has met the reporting requirements of paragraph (c) of this section; and

(5) A copy of the first taxpayer's report and any copies of statements of subsequent seller must be retained for inspection by the Board with the tax return on which the credit is claimed.

(c) Reporting Requirements.

(1) Reporting by persons paying the first tax.

Except as provided in paragraph (c)(2) of this section, the person that paid the first tax under Revenue and Taxation Code Section 7362 and 7363 (the first taxpayer) must file a report that is in substantially the same form as the model report provided in Exhibit A and contains all information necessary to complete such model report (the first taxpayer's report). A first taxpayer's report must be retained for inspection by the Board with the tax return on which the first tax was paid or reported.

(2) Optional reporting for certain taxable events.

Paragraph (c)(1) does not apply with respect to a tax imposed under Revenue and Taxation Code Section 7362 (removal at a terminal rack), Revenue and Taxation Code Section 7363(b)(2)

(nonbulk entries into the state), or Revenue and Taxation Code Section 7363(d) (removals or sales by blenders). However, if the person liable for the tax expects that another tax will be imposed under Sections 7362 and 7363 with respect to the fuel, that person should file a first taxpayer's report.

(3) Information provided to subsequent owners, etc.

(A) By Person Required to File First Taxpayer's Report.

A first taxpayer required to file a first taxpayer's report under paragraph (c)(1) of this section must give a copy of the report to:

1. The person to whom the first taxpayer sells the motor vehicle fuel within the bulk transfer/terminal system; or
2. The owner of the motor vehicle fuel immediately before the imposition of the first tax, if the first taxpayer is not the owner at that time.

(B) By Person Filing Optional First Taxpayer's Report.

A first taxpayer filing a first taxpayer's report under paragraph (c)(2) of this section should give a copy of the report to:

1. The person to whom the first taxpayer sells the motor vehicle fuel; or
2. The owner of the motor vehicle fuel immediately before the imposition of the first tax, if the first taxpayer is not the owner at that time.

(C) By Person Receiving First Taxpayer's Report.

1. Bulk Transfer/Terminal System Transaction

A person that receives a copy of the first taxpayer's report and subsequently sells the motor vehicle fuel within the bulk transfer/terminal system must give the copy and a statement that satisfies the requirements of paragraph (c)(3)(D) of this section to the buyer.

2. Rack and Below Rack Transaction

A person that receives a copy of the first taxpayer's report and subsequently sells the motor vehicle fuel outside the bulk transfer/terminal system should give the copy and a statement that satisfies the requirements of paragraph (c)(3)(D) of this section to the buyer, if that person expects that another tax will be imposed under Revenue and Taxation Code Sections 7362 and 7363 with respect to the motor vehicle fuel.

(D) Form of Statement.

A statement satisfies the requirements of this paragraph (c)(3)(D) if it is provided at the bottom or on the back of the copy of the first taxpayer's report (or in an attached document). This

statement must contain all information necessary to complete the model statement provided in Exhibit B but need not be in the same format.

(E) Sale to Multiple Buyers.

If the first taxpayer's report relates to motor vehicle fuel divided among more than one buyer, multiple copies of the first taxpayer's report must be made at the stage that the motor vehicle fuel is divided and each buyer must be given a copy of the report.

(d) Claim For Refund.

If the supplier fails to take a credit on a tax return filed within three months after the close of the calendar month in which the second tax was imposed, the supplier may only file a claim for refund with the State Controller to recover the tax. The claim for refund must be filed with the State Controller within three years from the date of purchase of the motor vehicle fuel.

Each claim for a refund must contain the following information with respect to the fuel covered by the claim:

- (1) The information required in Revenue and Taxation Code Section 8102.
- (2) Volume and type of motor vehicle fuel.
- (3) Date on which the claimant incurred the tax liability to which this claim relates (the second tax).
- (4) Amount of second tax that claimant paid or reported to the state and the tax return on which it was paid or reported.
- (5) A statement that claimant has not separately stated on the sales invoice reimbursement for both the first tax and the second tax or has not included in the sales price of the motor vehicle fuel reimbursement for both the first tax and the second tax. The second taxpayer can only receive reimbursement for one tax from the customer.
- (6) A copy of the first taxpayer's report that relates to the motor vehicle fuel covered by the claim.
- (7) If the motor vehicle fuel covered by the claim was bought other than from the first taxpayer, a copy of the statement of subsequent seller that the claimant received with respect to that motor vehicle fuel.

EXHIBIT A . . . [No Change]

EXHIBIT B . . . [No Change]

Note: Authority cited: Section 8251, Revenue and Taxation Code. Reference: Sections 7362, 7363, 8101, 8102, 8105, 8106~~8106.8~~ and 8127.5, Revenue and Taxation Code.

# CHANGES WITHOUT REGULATORY EFFECT UNDER CALIFORNIA CODE OF REGULATIONS, TITLE 1, SECTION 100

## Statement of Explanation

### Title 18. Public Revenues

Regulation 1205, *Fee Payer; Rebuttable Presumption*

Regulation 1212, *Liability for Fee*

Regulation 1271, *Records*

#### **A. Factual Basis**

Chapter 1.5 (commencing with section 1201) of division 2 of title 18 of the California Code of Regulations (chapter 1.5) contains regulations that implement, interpret, or make specific the provisions of the Underground Storage Tank Maintenance Fee Law (Law) (part 26 (commencing with section 50101) of division 2 of the Revenue and Taxation Code), pursuant to which the State Board of Equalization (BOE) administers the petroleum storage fees imposed under sections 25299.41 and 25299.43 of the Health and Safety Code.<sup>1</sup> The BOE hereby proposes to change the provisions of chapter 1.5 listed above under California Code of Regulations, title 1, section (Rule) 100 to update the manner in which the BOE refers to persons that are liable for payment of the fees imposed under sections 25299.41 and 25299.43 of the Health and Safety Code in the regulations.

The Law was enacted in 1989 (Sen. Bill No. 299 (Stats. 1989, ch. 1442)). Section 50107 of the Law defines the two-word term “fee payer” to mean “any person liable for the payment of a fee imposed by Section 25299.41 of the Health and Safety Code” and the two word term “fee payer” was originally used throughout the Law and in chapter 1.5.

However, amendments made to the Law since 2000 have used the one-word term “feepayer,” rather than the two-word term “fee payer.” (See, e.g., Assem. Bill No. 2894 (Stats. 2000, ch. 923) [adding the one-word term “feepayer” to section 50112 and replacing the two-word term “fee payer” with the one-word term “feepayer” in section 50112.4, subd. (b)].) Furthermore, the BOE has stopped using the two-word term “fee payer” to refer to a person that is liable for the payment of a BOE-administered fee in its forms and publications, and the BOE has adopted a uniform policy requiring its staff to use the one-word term “feepayer” in place of the two-word term “fee payer.” (See the direction regarding the word “feepayer” in the BOE Style A-Z section of BOE Publication 384, “A Style Guide for BOE Forms and Publications” (May 2011), Introduction and page 3 from the BOE’s internal website, attached.)

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<sup>1</sup> The BOE jointly administers the fees imposed under Health and Safety Code sections 25299.41 and 25299.43 under the Law in accordance with section 50108 of the Law and Health and Safety Code section 25299.43, subdivision (g), respectively. Chapter 1.5 was adopted to implement, interpret, and make specific the fees imposed by both sections 25299.41 and 25299.43 and the term “fee payer,” as currently used in chapter 1.5, refers to a person that is liable for the payment of the fees imposed by both sections.

The BOE-adopted regulations listed above use the two-word term “fee payer”. Therefore, the BOE now proposes to change the regulations listed above, and described in detail below, to replace the two-word term “fee payer” with the one-word term “feepayer” under Rule 100, in order to update the manner in which the BOE refers to persons that are liable for payment of the fees imposed under sections 25299.41 and 25299.43 of the Health and Safety Code in the regulations.

## **B. Proposed Changes**

### **1. Rule 100 Change to Regulation 1205, *Fee Payer; Rebuttable Presumption***

A Rule 100 change is proposed to replace the two-word term “Fee Payer” with the one-word term “Feepayer” in the title of Regulation 1205.

### **2. Rule 100 Changes to Regulation 1212, *Liability for Fee***

A Rule 100 change is proposed to replace the two-word term “fee payer” with the one-word term “feepayer” in the second sentence of subdivision (d) of Regulation 1212.

### **3. Rule 100 Change to Regulation 1271, *Records***

A Rule 100 change is proposed to replace the two-word term “fee payer” with the one-word term “feepayer” in subdivision (a) of Regulation 1271.

The foregoing changes are appropriate for processing under Rule 100 because they are changes without regulatory effect and do not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any California Code of Regulations provision. Furthermore, these changes are necessary in order to update the manner in which the BOE refers to persons that are liable for payment of the fees imposed under sections 25299.41 and 25299.43 of the Health and Safety Code in the regulations.

## PROPOSED CHANGES

1. Change Regulation 1205 (Fee Payer; Rebuttable Presumption) to read as follows:

### **Regulation 1205. ~~Fee Payer~~Fee Payer; Rebuttable Presumption.**

The fee is due from the owner of an underground storage tank for which a permit is required pursuant to Section 25284 of the Health and Safety Code. There is a rebuttable presumption that the owner of the real property is the owner of the underground storage tank located on the property, even if the property is leased to another person. This presumption may be overcome by showing that ownership of the tank rests with someone other than the real property owner. Evidence to rebut the presumption may include, but is not limited to, the following:

- (a) The lessee installed the underground storage tank at the location, and the lease agreement gives the lessee the right to remove the tank at the termination of the lease, regardless of whether the lessor's approval of the removal is required.
- (b) The lessee installed the underground storage tank at the location, and the lease agreement states that any improvements installed by the lessee are the property of the lessee during the term of the lease.
- (c) Documentation, such as a bill of sale, shows the transfer of ownership of the tank to a person other than the real property owner.
- (d) The underground storage tank is depreciated on the state or federal income tax returns of a person other than the real property owner.
- (e) The underground storage tank existed at the premises at the time the lease agreement was signed, and the lease agreement specifies that the underground storage tank is owned by and title thereto is vested in the lessee during the term of the lease.

Note: Authority cited: Section 50152, Revenue and Taxation Code; and Section 25299.42, Health and Safety Code. Reference: Section 50107, Revenue and Taxation Code; and Sections 25299.21, 25299.41 and 25299.43, Health and Safety Code.

2. Change Regulation 1212 (Liability for Fee) to read as follows:

### **Regulation 1212. Liability for Fee.**

- (a) The fee is imposed upon the owner of an underground storage tank for each gallon of petroleum placed into the tank. The owner of the tank is liable for payment of the fee regardless of whether the owner is the operator of the underground storage tank and is liable for the fee even if the owner and operator have entered into an agreement that requires the operator to pay the fee to the board.
- (b) The fee is due regardless of whether the fee has previously been paid for gallons of petroleum that were removed from an underground storage tank and placed into another underground storage tank or redeposited into the same tank in which they were previously stored.

(c) An owner is liable for the fee on all gallons placed in the underground storage tank(s) he or she owns. Where the owner requires a certain brand of fuel to be placed in a tank and the operator also places a different brand of fuel in the tank, the owner is liable for the fee on the gallons of both brands of fuel, even if placing fuel of a different brand in the tank violates the lease between the operator and owner.

(d) An owner is liable for the fee even though the owner claims he or she did not know the fee was due or was unable to obtain information from an operator as to the gallons placed into the underground storage tank(s). As provided by subdivision (c) of Section 50159 of the Revenue and Taxation Code, the board may provide to the ~~feepayer~~~~fee payer~~ otherwise confidential information obtained from the operator of an underground storage tank to the extent that this information is necessary for assessment, administration, and verification of the fee.

Note: Authority cited: Section 50142, Revenue and Taxation Code; and Section 25299.42, Health and Safety Code. Reference: Sections 50107, 50109 and 50159, Revenue and Taxation Code; and Sections 25299.41 and 25299.43, Health and Safety Code.

3. Change Regulation 1271 (Records) to read as follows:

**Regulation 1271. Records.**

(a) General. A ~~feepayer~~~~fee payer~~ shall maintain and make available for examination on request by the board or its authorized representatives, records in the manner set forth at California Code of Regulations, Title 18, Section 4901.

(b) Specific Applications. In addition to the record keeping requirements set forth in subdivision (a), owners of underground storage tanks shall comply with the following requirements.

An owner of underground storage tanks shall maintain complete records of all tanks owned and all purchases of petroleum products placed into underground storage tanks. Such records include but are not limited to:

- (1) Federal Income Tax Return Depreciation Schedules or fixed asset and improvement listing.
- (2) Property Tax Statements.
- (3) Underground storage tank installation records.
- (4) Lease agreements.
- (5) Petroleum products purchase invoices.
- (6) Copy of local agency permit and application for permit filed with the local agency.

Note: Authority cited: Section 50152, Revenue and Taxation Code. Reference: Sections 50109 and 50153, Revenue and Taxation Code.

## Introduction

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This house style guide has been developed by the Board of Equalization's (BOE) Editorial Services Section. As style changes over time, publication units, publishers, and newspapers generally decide to use one dictionary and one published style manual (in our case we use *Merriam Webster's Collegiate Dictionary* and *The Gregg Reference Manual*). In addition to the standard references, we have also developed this house style guide.

A team of editors, forms analysts, and Customer Service and Publishing Division managers developed this style guide to promote consistency in BOE forms and publications. This team discussed every item in this guide and agreed on how we should treat each individual entry.

If an example is not listed, please refer to *The Gregg Reference Manual, Eleventh Edition* for usage or *Merriam Webster's Collegiate Dictionary, Eleventh Edition*.

**E**

e.g., etc.	avoid; use for example, among others
enclosed (vs. attached)	to insert in the same envelope (see "attached")
ex tax	don't use; write out "without tax"

**F**

fax	lowercase
faxback	one word
federal	don't capitalize
feepayer	one word
fewer vs. less	use with things that are counted (fewer buckets, less water)
fine-tune	always hyphenated
firsthand	one word
fiscal year	lower case
follow-up (n., adj.)	<i>Example:</i> She was in charge of follow-up.(n) She did the follow-up work.(adj.)
follow up (v.)	<i>Example:</i> Please follow up with her as the deadline approaches.
form	avoid using before form identifier (BOE-770)
full-time	always hyphenated
fundraising	one word, no hyphen
FY (fiscal year)	capitalize when referring to fiscal year

**G**

Governor (the)	capitalize when referring specifically to the Governor of California
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**H**

handicap accessible	avoid; use wheelchair accessible
hard copy (n.)	<i>Example:</i> Please give it to Legal in hard copy.
hard-copy (adj.)	<i>Example:</i> Legal wants it in hard-copy format.
he/she; he or she; him/her; him or her	avoid both; use their or our
headquarters	a singular or plural noun
Headquarters	capitalized when referring to 450 N Street location
homepage	one word
Honorable	capitalized when used before name (the Honorable

Attachment